

**PT 02-46**

**Tax Type: Property Tax**

**Issue: Religious Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**FULL GOSPEL  
CHRISTIAN ASSEMBLY,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**No. 01-PT-0001  
P.I.NS: 28-26-400-037  
28-26-402-062  
(99-16-1763)  
28-35-203-004  
(99-16-1801)**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Brian F. DeCook, attorney at law, on behalf of the Full Gospel Christian Assembly (hereinafter the “Applicant”); Mr. Marc Muchin, Special Assistant Attorney General, on behalf of the Illinois Department Of Revenue (hereinafter the “Department”).

**SYNOPSIS:** These consolidated proceedings present the limited issue of whether real estate identified by Cook County Parcel Index Numbers 28-35-203-004, 28-26-400-037 and 28-26-402-062 (hereinafter collectively referred to as the “subject property”) was: (a) “used exclusively for religious purposes,” as required by Section 15-40 of the Property Tax Code (35 ILCS 200/1-1, *et seq.*) during any part of the 1999 assessment year; and/or (b) “used as part of a use for which an exemption is provided by this Code,” as required by Section 15-125 of the Code during any part of the 1999 assessment year. The underlying controversy arises as follows:

Applicant filed Real Estate Exemption Complaints with the Cook County Board of Review (hereinafter the “Board”) on February 3, 2000. The Board reviewed applicant’s complaints and recommended to the Department that: (a) parcel 28-35-203-004 be exempt as of August 11, 1999; but, (b) parcels 28-26-400-037 and 28-26-402-062 not be exempt for any part of the 1999 assessment year due to “insufficient documentation.” (Dept. Group Ex. Nos. 1, 2).

On December 21, 2000, the Department issued two separate determinations as to the subject properties. The first denied the exemption for parcel 28-35-203-004 *in toto* due to lack of exempt use; the second denied the exemption for parcels 28-26-400-037 and 28-26-402-062 *in toto*, also due to lack of exempt use. (Dept. Group Ex. No. 3).

Applicant filed appeal to these denials and later presented evidence at a formal evidentiary hearing. Following a careful review of the record made at that hearing, I recommend that all of the Department’s initial determinations in these matters be affirmed.

**FINDINGS OF FACT:**

1. The Department’s jurisdiction over these matters and its positions herein are established by Dept. Group Ex. Nos. 1, 2 and 3.
2. The Department’s position in these matters is that the subject properties are not in exempt use. Dept. Group Ex. No. 1, Doc. B.
3. Applicant, a Christian church, obtained ownership of parcels 28-26-400-037 and 28-26-402-062 by means of a special warranty deed dated August 10, 1999 and parcel 28-35-203-004 by means of a warranty deed dated August 11, 1999. Applicant Ex. No. 1, 2, 3.

4. Applicant held a fundraising campaign to assist with the purchase of both subject properties. However, it did not continue these fundraising efforts after the purchase dates. Tr. pp. 26, 45.
5. Parcels 28-26-400-037 and 28-26-402-062 are located across the street from applicant's main church complex. Tr. p. 17.
6. Applicant's main church complex, identified by Cook County Parcel Index Number 28-35-203-005, was exempted from real estate taxation pursuant to the Department's determination in docket number 89-16-972. Administrative notice of records kept in the ordinary course of the Department's business.
7. The Application for Property Tax Exemption, received by the Department on July 31, 2000, indicates that parcels 28-26-400-037 and 28-26-402-062 are "29 acres of vacant land" that applicant intends to use for parking and future expansion. Dept. Group Ex. No. 2; Tr. p. 25.
8. In early 1999, applicant engaged a civil engineering firm to perform a feasibility study as to whether parcels 28-26-400-037 and 28-26-402-062 could be used for their intended purposes. Applicant Ex. No. 5; Tr. p. 51.
9. The civil engineering firm rendered the requested report on March 3, 1999, which indicated, *inter alia*, that: (a) applicant could eventually use parcels 28-26-400-037 and 28-26-402-062 for their intended purpose; but, (b) it would be necessary to perform a further preliminary study in order to determine "the unusual construction costs that are associated with constructing on this site relative to wetlands and floodplain regulations and soil conditions." Applicant Ex. No. 5; Tr. p. 77.

10. Applicant could not proceed with actual development of parcels 28-26-400-037 and 28-26-402-062 unless it first obtained a special use permit from the Village of Hazel Crest. Tr. pp. 56-58, 75-76.

11. Applicant took some initial steps toward procuring, but did not actually procure, the necessary special use permit during 1999. *Id.*

12. Applicant did, however, use parcels 28-26-400-037 and 28-26-402-062 for the following purposes after it acquired them:

DATE	USAGE
August, 1999 (exact dates unspecified)	<ul style="list-style-type: none"><li>• One prayer meeting, attended by approximately 150 of applicant's elders and deacons, to dedicate property for applicant's use;</li><li>• Debris cleared from properties by applicant's engineering department so as to allow usage for overflow parking;</li><li>• Applicant begins to perform other preparatory landscaping, such as doing setback cutaways, having post holes dug and signage footing installed, but cannot proceed with further development because it lacked the necessary permit.</li></ul>
September, 1999 (exact date unspecified)	<ul style="list-style-type: none"><li>• One congregational prayer service, attended by approximately 1,500 people, at which the larger congregation dedicated the property for applicant's use.</li></ul>
Second Saturday mornings in October and November	<ul style="list-style-type: none"><li>• Men's fellowship<sup>1</sup> meetings</li></ul>
Unspecified dates in October and November	<ul style="list-style-type: none"><li>• Various intercessory prayer group meetings<sup>2</sup></li></ul>

Tr. pp. 18-24, 27-36, 40, 59-67, 72-3, 78, 89, 93, 105-108 - 109, 114-119.

13. Parcel 28-35-203-004 is located directly west of applicant's main church complex.  
Tr. p. 25.

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1. The men's fellowship is an auxiliary organization of applicant's church. Tr. pp. 22, 35, 62.

14. The Application for Property Tax Exemption, received by the Department on July 31, 2000, indicates that parcel 28-35-203-004 is a 2¼ acre parcel of vacant land that applicant intends to use for overflow parking and future expansion. Dept. Group Ex. No. 2.
15. Parcel 28-35-203-004 was not zoned for parking usage as of the date of acquisition. Applicant therefore retained a civil engineering firm and took other preliminary steps to obtain the necessary special use permit. Applicant Ex. Nos. 7A, 7B; Tr. pp. 67-69, 71.
16. Applicant submitted a site plan for the special use permit to the Village of Hazel Crest (hereinafter the “Village”) in November of 1999. It did not, however, actually receive the special use permit before the end of 1999. Applicant Ex. Nos. 7A, 7B; Tr. pp. 68-71, 75-76.
17. Applicant nevertheless used parcel 28-35-203-004, as well as parcels 28-26-400-037 and 28-26-402-062, for overflow parking for approximately one and a half to two months following their acquisition. Tr. pp. 41, 42.
18. The Village instructed applicant to discontinue using all of the subject properties for overflow parking as of unspecified dates in 1999. Applicant promptly complied with the Village’s directives. Tr. pp. 42, 46-47, 84-85.
19. Applicant also used parcel 28-35-203-004 for nature walks that were part of the curriculum taught at the religious school located in its main church facility, on Mondays, Wednesdays and Fridays from mid-August until mid-November of 1999. Tr. pp. 90-92.

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2. The intercessory prayer group is an auxiliary organization of applicant’s church. Tr. pp. 22, 35, 113-114.

## **CONCLUSIONS OF LAW:**

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Sections 15-40 and 15-125 of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq*, wherein the following are exempted from real estate taxation:

### **200/15-40. Religious Purposes, orphanages, or school and religious purposes**

§ 15-40. All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to a profit ... [.]

35 **ILCS** 200/15-40.

### **200/15-125. Parking areas**

§ 15-125. Parking areas, not leased or used for profit, when used as part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, or religious or charitable institutions which meets the qualifications for exemption..[.]

35 **ILCS** 200/15-125.

The word “exclusively” when used in Section 15-40 and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). As applied to the uses of property, a religious purpose means “a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.”

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911).

Here, applicant clearly intended to use all of the subject properties for the future expansion of its congregation and overflow parking. Nonetheless, applicant's actual, rather than intended uses, are determinative on the question of exempt use. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). This is especially true where, as here, applicant was required to demonstrate conformity with applicable legal restrictions in order to bring its ambitious plans into fruition.

Most of these legal restrictions consisted of procuring necessary municipal permits, which applicant did not actually obtain at any point during the tax year in question. These permit requirements made it legally impossible for applicant to effectuate most of its intended uses throughout the period in question. Such requirements affirmatively inhibited applicant's capacity to actively engage in any significant adaptation and development of the subject properties throughout that period.

Applicant did engage in some debris removal and undertook other preliminary measures indicative of its ability to engage in an appropriate level of adaptation and development. That capacity was quite limited for the reasons identified above. However, it was also severely restricted by the practical difficulties associated with overcoming the serious flood plain issues identified in the civil engineer's report. (*See*, Applicant Ex. No. 5). Therefore, I must conclude that applicant's actual prospects for engaging in an appropriate level of adaptation and development remained speculative throughout the relevant period.

Applicant fueled this speculation by failing to introduce any evidence establishing that it had procured whatever financing was necessary to ensure that its project remained economically viable. The business realities inherent in modern construction practice dictate that applicant could not have moved beyond mere initial preparations without first obtaining such financing. However, the only evidence this record contains with respect to financing is that applicant: (a) held a fundraising campaign in order to provide funds for its *acquisition* of the subject properties; and, (b) ceased this campaign immediately after the acquisition dates. (Tr. pp. 26, 45).

The narrow scope of this campaign is, at minimum, inconsistent with one designed to ensure the continued fiscal viability of applicant's project. All of the doubts associated with this inconsistency must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Consequently, the economic viability of applicant's project as a whole remained uncertain throughout the period under review. For this reason, the present case is distinguishable from Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987), wherein the court held in favor of exempting part of a medical facility that was under active construction during the tax year in question.

Furthermore, the Weslin Properties opinion fails to disclose that the applicant in that case was subject to the types of legal or practical impediments that prevented this applicant from proceeding beyond preliminary preparation work throughout the relevant period. Therefore, for all the above-stated reasons, I conclude that it is both factually and legally inappropriate to apply the holding in Weslin Properties to this case.



Notwithstanding the above, I briefly note that applicant did use the subject properties for other purposes after it acquired ownership of them. These purposes included: (a) holding intercessory prayer meetings and other related activities on parcels 28-26-400-037 and 28-26-402-062; (b) conducting some nature works for its religious school on parcel 28-35-203-004; and, (c) using parts of the subject properties for overflow parking during one or two unspecified months of the relevant time period.

This record lacks necessary specifics as to the exact dates when applicant actually used the subject property for overflow parking. Absent this evidence, applicant, which bears the burden of proving all elements of its exemption claim by clear and convincing evidence (Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994)), has failed to sustain that burden with respect to all of its overflow parking usages.

More importantly, the Village of Hazel Crest affirmatively prohibited applicant from using all of the subject properties for overflow parking during at least part of the period under review. This means that it was legally impossible for applicant to use the subject properties for overflow parking while the Village's prohibition remained in effect. Therefore, it would be legally inappropriate to grant applicant an exemption for the period of prohibited use even if applicant had sustained its burden of proof as to the evidentiary deficiencies identified above.

The intercessory prayer meetings and other related activities, including nature walks, could constitute exempt uses if applicant proves: (a) them to be "reasonably necessary" to facilitate other exempt uses (Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985, 987 (4<sup>th</sup> Dist. 1992); Evangelical Hospital Ass'n. v.

Novak, 125 Ill. App.3d 439 (2<sup>nd</sup> Dist. 1984)); and, (b) that the properties on which those activities took place were “used exclusively for religious purposes. ” 35 ILCS 200/15-40.

One can fairly say that the intercessory prayer groups, men’s fellowship meetings, nature walks and other activities that took place on the subject property were “reasonably necessary” to facilitate the exempt use of applicant’s nearby church. However, for the following reasons, I conclude that the properties on which those activities took place were not “used exclusively for religious purposes,” as required by Section 15-40 of the Property Tax Code.

The word “exclusively,” when used in Section 15-40 means "the primary purpose for which property is used and not any secondary or incidental purpose." Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). In analyzing whether property satisfies the “exclusive” use requirement, it is appropriate to compare the relative extent to which the property is used for taxable and tax exempt purposes. Metropolitan Water Reclamation District of Greater Chicago v. Illinois Department of Revenue, 313 Ill.App.3d 463 (1<sup>st</sup> Dist. 2000), *leave to appeal denied*, October 4, 2000.

Here, the relevant comparison is between taxable uses related to the initial phases of applicant’s proposed construction project and the tax exempt uses associated with the intercessory prayer services and other related activities. After carefully reviewing all of the evidence pertaining to this comparison, I conclude that the most applicant has proven is that it actually used the subject properties for “religious” purposes on an intermittent basis.

Such sporadic uses might qualify as primarily “religious” if: (a) they were the only ones to which the subject properties were put; and, (b) these properties had not been totally vacant as of the dates applicant purchased them. *Compare*, Mount Calvary Baptist Church v. Zehnder, 302 Ill. App. 3d 661 (1<sup>st</sup> Dist. 1998) (facility that had been actively used as a church complex before sustaining severe fire damage that rendered parts of the complex unusable held exempt), *with* Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was intended for religious use but completely vacant throughout the tax year in question held non-exempt). Because these properties were totally vacant when applicant acquired them, and the uncertainties associated with applicant’s proposed development project caused the subject properties to be used for non-exempt purposes, there exists doubt as to whether said properties were in fact primarily used for “religious” purposes.

As noted above, all such doubts must be resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Therefore, the Department’s initial determinations in these matters, finding that all of the subject properties were not in exempt use, should be affirmed.

**WHEREFORE**, for all the aforementioned reasons, it is my recommendation that real estate identified by Cook County Parcel Index Numbers 28-35-203-004, 28-26-400-037 and 28-26-402-062 not be exempt from 1999 real estate taxes under the Property Tax Code.

June 3, 2002  
Date

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Alan I. Marcus  
Administrative Law Judge